

1 Mark M. Sharf, Subchapter V Trustee
2 6080 Center Dr., Suite 600
3 Los Angeles, CA 90045
4 (818)961-7170
5 mark@sharflaw.com

6 Subchapter V. Trustee

7 UNITED STATES BANKRUPTCY COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 OAKLAND DIVISION

10 In re:

11 ARTESIAN FUTURE TECHNOLOGY, LLC,
12 a North Carolina limited liability company, dba
13 ARTESIAN BUILDS, dba ARTESIAN, LLC,
14 dba BLDYR, INC., dba ARTESIAN

15 Debtor

CASE NO. 22-40396 CN

CHAPTER 11

OPPOSITION TO APPLICATION TO
APPROVE DESIGNATION OF
RESPONSIBLE INDIVIDUAL FOR
CORPORATE DEBTOR

DATE: MAY 13, 2022
TIME: 11:00 A.M.
CTRM: VIA ZOOM

16 Mark M. Sharf, Subchapter V Trustee, hereby opposes the Application to Approve
17 Designation of Responsible Individual For Corporate Debtor (the "Application") as follows:
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- 19 1. On Question 28 of the Statement of Financial Affairs in this case the Debtor listed all
20 of its officers, directors, managing members, members in control 'or other people in
21 control of the debtor at the time of the filing of this case' as:

22 "Noah Katz 5801 Cascade Drive Chapel Hill, NC 27514 President 100%"

23 Doc 31, p. 27.
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1 2. At Doc 12, p. 2, lines 15-16 (the Debtor's motion to approve its engagement
2 agreement with BPM, LLC) the Debtor argued:

3 "The Debtor was founded by Noah Katz. Noah Katz is Debtor's managing
4 member and sole owner."
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6 Again, the Debtor has only one managing member and one owner.

7 3. F.R.B.P. 9001(5) provides:

8 "(5) "Debtor." When any act is required by these rules to be performed by a
9 debtor or when it is necessary to compel attendance of a debtor for
10 examination and the debtor is not a natural person: (A) if the debtor is a
11 corporation, "debtor" includes, if designated by the court, any or all of its
12 officers, members of its board of directors or trustees or of a similar
13 controlling body, a controlling stockholder or member, or any other person in
14 control;..."
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16 Rule 9001(5) applies in this case because limited liability companies are defined as
17 corporations under existing case law. Gilliam v. Speier (In re KRSM Props., LLC), 318 B.R.
18 712, 717 (9th Cir. BAP 2004).
19

20 We know that Edward Webb is not a person "in control" (and that he holds none of the
21 other positions specified in Rule 9001(5)) because question 28 of the Statement of Financial
22 Affairs asks this precise question. For this reason alone Edward Webb should not be authorized
23 to act on behalf of the Debtor.
24

25 While Noah Katz (himself and with his parents) retains complete dominance of the
26 Debtor in this case, he wants someone with no personal knowledge of the facts (and who was
27 just brought into this matter in the last 60 days) to take over as the "Responsible Individual."
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1 This would deprive creditors of the right to ask questions at the 2004 exam of someone with
2 personal knowledge of the facts. The 2004 exam is now set for May 16, 2022 at 1:00 p.m.. The
3 Trustee objects to the Application both because it runs afoul of F.R.B.P. 9001(5), and because it
4 deprives creditors of the opportunity to learn what actually occurred from someone with personal
5 knowledge. See In re Muy Bueno 257 B.R. 843 (Bankr. W.D. Tex. 2001) (Rule 9001 gives
6 court, not debtor, power to decide who must attend section 341(a) meeting).
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8 Wherefore, Mark M. Sharf Subchapter V Trustee prays that the Application be denied.
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10 Dated: May 9, 2022

/s/ Mark M. Sharf

Mark M. Sharf, Subchapter V Trustee
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